

IN THE MATTER OF	:	BEFORE THE
AMERIGAS PROPANE L.P., A	:	HOWARD COUNTY
DELAWARE LIMITED PARTNERSHIP	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 12-016C

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DECISION AND ORDER

On October 4, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of AmeriGas Propane L.P., a Delaware Limited Partnership, for the bulk underground storage of fuel oil in an M-2 (Manufacturing: Heavy) Zoning District, pursuant to Section 131.N.24 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising and notice requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

David Carney, Esquire, represented the Petitioner. At the outset of the hearing, Mr. Carney stated the Petitioner agreed with the Technical Staff Report (TSR) and would present no evidence or testimony at the hearing.

FINDINGS OF FACT

Based upon the preponderance of evidence as presented in the petition and TSR, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 6th Election District on the southeast side of Dorsey Run Road about 1,200 feet north of Patuxent Range Road. It is

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referenced as Tax Map 48, Grid 2, Parcel 134, Parcel B and is also known as 8101 Dorsey Run Road (the Property).

2. Property Description. The Property is Parcel B of the Dorsey Woods subdivision (Recorded Plat 15611). It is an irregularly shaped, unimproved, wooded parcel. There is a gentle drop in elevation from west to east.

3. Vicinal Properties. All vicinal properties are zoned M-2. To the west, Parcel D of the same subdivision is a 1.38-acre Howard County Department of Recreation and Parks lot with wetlands, a 100-year floodplain, and a drainage and utility easement. Across Dorsey Run Road to the north, Parcel A of the subdivision is the site of a warehouse/office building (SDP 02-102). Parcel C is a large Howard County Department of Recreation and Parks Open Space lot with wetlands, a forest conservation area, 100-year floodplain, and a drainage and utility easement.

Parcel 4 of the Property's northwest side is largely paved and improved with several small commercial office buildings. Parcel 109, Parcel B of the Dorsey Run Industrial Park adjoins the south and west portions of the Property. This parcel is improved with a large warehouse building to the south of the Property, and the remainder is unimproved. Parcel 109, Parcel A to the west of Parcel B is improved with two large warehouse buildings.

4. Roads. Dorsey Run Road has two travel lanes within a variable width right-of-way. Visibility from the proposed driveway appears acceptable with an estimated 250+-foot site distance to the east and west. According to data from the State Highway Administration, the traffic volume on Dorsey Run Road north of Patuxent Range Road was 6,501 average daily trips as of 2010.

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5. Water and Sewer Service. The Property is served by public water and septic facilities.

6. General Plan. PlanHOWARD 2030 designates the Property as a "Growth and Revitalization area on the Designated Place Types Map. Dorsey Run Road is depicted as a Major Collector on the PlanHOWARD 2030 Functional Road Classification Map.

7. The Proposed Conditional Use. The Petitioner proposes to operate a bottled propane facility. A 1,700-square foot office building would be constructed about 82 feet from Dorsey Rd Road. Two fenced warehouses (3,600 and 6,000 square feet) with loading docks would be constructed in the rear portion of the Property. A paved loading area is also proposed behind the office building. Three, 30,000-gallon underground tanks with surrounding bollards will also be sited about 80 feet from the rear of the office building. The tanks would be filled to about 80 percent of capacity, with the remaining 20 percent used as a safety and maintenance vapor barrier. A driveway on the east side will provide access to ten office and visitor parking spaces in front of the office building. A seven-foot high barbed wire fence on either side of the office building will have an automatic gate and continue along the side and rear lot lines. Nine parking spaces are proposed on the office building's west side, within the fenced area. Landscaping will be provided in accordance with the Landscape Manual.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. PlanHOWARD 2030 designates the Property as a "Growth and Revitalization area." The proposed use is presumptively compatible with the uses in this area.

The Nature and Intensity of the Use. The three structures and proposed underground tanks will be located in a commercial and industrial area. The proposed use is consistent with these uses and is similar in intensity to these area uses.

The size of the site in relation to the use. The proposed use will meet all setbacks and can easily support the use.

The location of the site with respect to streets giving access to the site. The proposed use has frontage on a collector road.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed use will not be combined with a permitted use.

2. Adverse Effect. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under

Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize the potential for adverse impact from virtually every land use activity. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an M-2 District. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the M-2 District. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995). For the reasons stated below, the Hearing Examiner concludes the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with the bulk storage of fuel oil in an M-2 district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

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According to the petition, the use will generate nothing other than the normal physical conditions associated with the Conditional use. The Hearing Examiner concludes that any inherent operational adverse effects resulting from the proposed conditional use will not be greater at the subject site than elsewhere in the zone or applicable other zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed structures and uses meet all setback requirements and height restrictions. The existing and any proposed landscaping meet minimum requirements. Importantly, area properties are similarly improved with commercial and industrial uses and associated automobile/truck traffic. Consequently, the Hearing Examiner concludes the location, nature and height of structures and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Zoning Regulations Section 133.4 requires 0.5 parking spaces for every 1,000 square feet of warehouse space and 3.3 parking spaces per 1,000 square feet of office space. For the 9,600-square foot area of the two warehouses, six spaces are required. For the 1,690-square foot

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office building, five spaces are required. Eleven spaces are therefore required and the Petitioner is proposing 19 spaces. The loading area will be located behind the office building and screened from the road by landscaping.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The proposed driveway will likely provide safe access, with adequate sight distance.

II. Specific Criteria for the Bulk Storage of Gasoline, Fuel Oil and Liquefied Petroleum

(Section 131.N.24)

a. Maximum storage above ground shall not exceed 10,000 gallons or its equivalent in pounds or cubic feet, for each 20,000 square feet of lot area. Except that total storage of liquefied petroleum in the B-2 district shall not exceed 2,000 gallons and no single container may contain more than 1,000 gallons of liquefied petroleum, total storage shall not exceed 20,000 gallons in the B-2 and M-1 districts.

The proposed use would be located in an M-2 zoning district. This section does not apply.

b. If a storage area is closed or not operated for a continuous period of twelve months, the storage facilities shall be dismantled and removed from the site.

This requirement being more in the nature of a condition of approval rather than an approval standard, no legal conclusion is required.

c. Solid walls such as masonry or wood and masonry may be required by the Hearing Authority when the site borders a residential district. When solid walls are required, landscape planting is required between the outside of the wall and the property line.

This section is inapplicable, as the Property does not adjoin a residential area.

ORDER


Based upon the foregoing, it is this **11th day of October 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the conditional use petition of AmeriGas Propane L.P., a Delaware Limited Partnership, for the bulk underground storage of fuel oil in an M-2 (Manufacturing: Heavy) Zoning District, is hereby **GRANTED**;

Provided, however, that:

1. The conditional use will apply only to the uses and structures as described in the petition and Conditional Use Plan submitted and not to any other activities, uses, structures, or additions on the Property.
2. If the storage area is closed or not operated for a continuous period of twelve months, the storage facilities shall be dismantled and removed from the site.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.